

**Delta Protection Commission Meeting  
March 26, 1998**

**1. Call to Order/Attendance.**

The meeting was called to order at 6:30 p.m. Commissioners present were: Chairman McCarty, Brean, Broddrick, Cabaldon, Calone, Curry, Ferreira, Harris, McGowan, Vice Chair Mello, Nottoli, Potter, Salmon, Thomson, and Yates. Commissioners absent were: Barber, Canciamilla, Rhodes, and Sanders.

**2. Public Comments.**

There were no public comments.

Commissioner Thomson commented on the extension of the Commission's sunset date. He said he had sought input from the entire Board of Supervisors and the Board voted to not support a time extension in order to retain local control of land use issues at the local government level. He said the Board sees its action as a position against regional government, not a position against protecting the Delta.

Commissioner Harris said the City of Rio Vista is in support of the extension of the sunset date.

**3. Minutes of the January 22, 1998 Meeting.**

Commissioner Curry asked that on page five, first and second paragraphs should note the comments refer to the flooding events of January and February 1997.

On a motion by Commissioner Cabaldon, and a second by Vice Chair Mello the draft minutes were approved with corrections noted by Commissioner Curry. Commissioners absent from the last meeting abstained (Thomson, McCarty, McGowan and Broddrick)

**4. Chairman's Report.**

Chairman McCarty introduced the new Commissioner representing Department of Parks and Recreation, Ron Brean. He is the District Supervisor for the Gold Rush District that includes the foothills, Old Town Sacramento, and the Delta area. Chairman McCarty announced the next meeting is scheduled for Thursday, May 28, 1998. Tentatively scheduled are discussion of CALFED Draft Environmental Impact Report, consideration of Solano County's submittal re: Amendment of the Commission's Plan re P-3, vote on Sacramento County's Submittal re: Amendment of the Commission's Plan re p-3, and consideration of work plan and budget for FY 98-99. He announced two Subcommittee meetings have been set: a CALFED Subcommittee meeting on April 20 and a Budget and Finance Subcommittee meeting on April 29.

**5. Attorney General's Report.**

Dan Siegel updated the Commission on the status of the Akins v. State of California suit. The Court of Appeal issued a decision which held that where a flood control project is flooding an area that historically floods, the reasonableness test applies. However, if the area had not historically flooded, then a strict liability test is applied. The suit will be appealed to the State Supreme Court.

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Vice Chair Mello asked what is considered "historical flooding"; Mr. Siegel was unsure of a definition, other than if there were no protection the area would flood.

#### **6. Executive Director's Report.**

Ms Aramburu introduced Lori Clamurro, the Delta Protection Commission's new employee. She is a Sacramento native and graduated from UC Davis last June with a degree in Environmental Policy Analysis and Planning. She had an internship with the Department of Parks and Recreation, and worked in the Department of Conservation's Land Resource Protection Division which administers the Williamson Act program.

Since starting work at the beginning of February, Lori has been attending CALFED meetings, including: Ecosystem Restoration Workgroup, Ecosystem Roundtable, Water Transfers Work Group, and Assurances Work Group. She has also attended Delta In-Channel Island Work Group, the Delta Levees and Habitat Advisory Committee meeting and the meeting of the Implementation Committee of the San Francisco Estuary Project. This is in addition to special research projects and tracking of pending legislation.

Ms Aramburu reviewed the material sent in the February mailing including: a letter sent on the CVPIA environmental document; a letter to CALFED and attached verified figures for ERPP program in the Delta; the final Annual Report; and the Final Recreation Inventory.

In the current mailing was: 1998 Spending Plan for Category III grants for Ecosystem Restoration; schedule of public hearings on the CALFED DEIR including one on May 6 at 7 p.m. at the Jean Harvie Community Center; and a Summary of 1996 Regional Monitoring Plan for the Bay, which includes two sites at the western edge of the Delta. She noted in 1998 Category III grants: on page 7, # 31, there is a \$500,000 grant to try to resolve some of the issues identified by the Regional Board about dredging. The Board has neither the funds nor the staff to carry out needed research. The funds will be overseen by the Delta Levees Habitat Advisory Committee. She noted she had attended BDAC meetings, CALFED Levees and Channels Technical Group, the In-Channel Island Work Group [Received first phase of grant to carry out PILOT project to use techniques other than riprap to protect in-channel islands], Delta Partners, through Coast Guard--State and Local Agencies re Delta issues; briefing on the grant program to remove abandoned vessels--SB 172-Rainey last year; a meeting with US Fish and Wildlife Service staff re EIR preparation for North Delta Component of Stone Lakes Wildlife Refuge--Prospect Island, Little Holland Tract and Liberty Island; a meeting of the Delta Chambers re Delta Protection Commission and other Delta issues; meeting of the Advisory Committee for Great Valley Center--new nonprofit group dedicated to regional issues in the Central Valley.

Commissioner Potter suggested that she distribute a written copy of the Executive Director's report at each meeting; she agreed.

#### **7. Pending Projects Memo**

Chairman McCarty asked if there were any questions or corrections on the Pending Projects Memo.

Vice Chair Mello gave a brief update on the acquisition of a conservation easement on Tyler Island.

Commissioner Salmon asked about the status of the Regional Board's proposed amendment of the Basin Plan; Ms Aramburu said this project is still underway and they will schedule an additional workshop when the revisions are complete.

Commissioner Salmon asked about the status of the Interim South Delta Program; Ms Aramburu said the project is a proposed solution to a lawsuit brought by the South Delta Water Agency. The project includes construction of four barriers across waterways in the South Delta; three to control water elevation and one to control fish barriers; dredging of Old River, and adding a second inlet at the north end of Clifton Court Forebay. Commissioner Salmon noted that South Delta water runs between Victoria Island and Union Islands, and there is often a back-up into Middle River. He said if the inlet is moved to the north, the South Delta farmers will not get the flow of water south and east of the new inlet. Commissioner Potter noted that is a legitimate concern, but noted that the proposed project is what was derived from discussions with the South Delta Water Agency. Ms Aramburu said she would check with staff to see if similar comments were submitted as part of the public hearings.

Commissioner Yates asked the status of the Yolo County Habitat Conservation Plan; Ms Aramburu said this is a county wide conservation plan to develop uniform mitigation for development allowed in the existing General Plans. She said it includes mitigation for loss of agricultural lands through acquisition of conservation easements to permanently protect agricultural lands, and habitat mitigation on publicly-owned lands. Commissioner Yates asked about the acreage listed for loss of agricultural lands; she said that is the lands that would be developed for urban development under existing General Plans. Commissioner Broddrick noted that there has already been acquisition of conservation easements anticipating the approval of the Plan. Ms Aramburu noted there is a Land Trust in Yolo County, set up to receive and hold the acquired conservation easements.

**8. Public Hearing on Submittal from Sacramento County Regarding Conformance with Amendment to the Land Use and Resource Management Plan for the Primary Zone of the Delta.**

Chairman McCarty said the County proposes to include Utilities and Infrastructure Policy P-3 in the Commission's Plan that has been adopted into the County's General Plan as a policy document. The County originally adopted the Commission's Plan, but **excepted** Utilities and Infrastructure P-3.

Ms Aramburu reviewed the staff report describing the proposal received from Sacramento County. Sacramento County's proposal is different than the others recently reviewed by the Commission-  
-Sacramento County is proposing a new General Plan amendment to include P-3 as part of the Delta Plan incorporated by reference into the County's General Plan. She said the proposal has been reviewed by staff and staff believes the proposed County action would be in compliance with the Commission's Act and Plan.

Commissioner Nottoli noted that at the time the County first addressed this issue, the lawsuit was still pending and the County wanted to move forward. He described the amendment as a "clean-up" action.

Chairman McCarty opened the public hearing; there were no public comments.

Chairman McCarty noted that written comments may be submitted until April 10, 1998; at that time the public record will be closed.

9. **Briefing on CALFED Program.**

Chairman McCarty welcomed Lester Snow, Director, of the CALFED program.

Mr. Snow said the DEIR has been released; the comment period closes on June 1, 1998. He noted the DEIR is programmatic--an overview of the ideas which have been presented. He described the Bay Delta Advisory Council and the Agency Policy Group. He said 12 public hearings have been scheduled on the DEIR.

Mr. Snow used overheads to make a presentation which described the areas of concern and solution areas, and the three basic alternatives, with six common elements (water use efficiency, ecosystem restoration program plan, water transfers, water quality, watershed management program, levee stability program) and two variable components (storage and conveyance).

Commissioner Salmon asked about the flooding of four islands in Alternative 2; Mr. Snow said that variation of Alternative 2 is not considered in the DEIR.

Commissioner Calone asked about the intensity of flows and how the rerouted water flows would impact the levees on nearby islands (Webb, Bradford, Holland, etc); Mr. Snow noted the velocities in the widened channel would not be increased. Commissioner Calone said that would not address the needs of the lower islands; Chairman McCarty asked that CALFED staff respond after the meeting.

Vice Chair Mello said that there are similar concerns about the operation of McCormack-Williamson Tract.

Commissioner Nottoli asked where the three million acre feet of new storage would be located; Mr. Snow said there are several sites being evaluated including: Sites-Colusa complex (northwest of Colusa) for 1.5 maf, raise Shasta Dam, expand Los Vaqueros Reservoir, Los Banos Grande, and Garza Reservoir (50 miles south of San Luis).

Commissioner McGowan asked how much water is exported from the Delta; Mr. Snow said the expected net yield from constructed 3 maf of new storage is 800,000 ac ft to 1 maf. Commissioner Potter said the average exports from the State and federal projects are between 5 and 6 maf, just under 7 maf is the largest ever exported.

Mr. Snow noted there is no substantial increase in water supply, so there will not be larger flows and velocities. Commissioner McGowan asked if new water storage will be built before the water is exported out of the Delta; Mr. Snow said the water to be stored in the new storage will be water captured during times of high flows, and can be released during critically dry years.

Commissioner Potter noted that one of the common programs will improve the stability of the Delta levees. Ms Aramburu noted the proposed standard is PL-99; the standard recommended in the Commission's Plan.

Mr. Snow described Alternative 3, modeled with a 10,000 cfs diversion; the total export is 15,000 cfs, so 80% would be in the canal and 20% through the Delta waterways.

Commissioner Brean asked about the ratios diverted through and around the Delta; does that refer to the amount of exported water or of total flow; Mr. Snow said export water.

Mr. Snow reviewed other issues: drinking water quality, especially bromide levels, and benefits to fisheries--generally fisheries experts say Alternative 3 gives the most benefits. The staff will be working to continue to refine the alternatives and to develop assurances and financing to ensure the program proceeds in unison. There are concerns about impacts associated with conversion of agricultural lands, particularly prime and unique agricultural lands.

Vice Chair Mello asked if the impacts to agricultural lands is included in the socio-economic impacts; Mr. Snow agreed. Vice Chair Mello asked why Alternative 3 calls for the creation of more shaded and shallow riparian habitat if Alternative 3 is the most fish friendly alternative.

Commissioner Nottoli asked if the socio-economic impact will take into account the impacts on the local economy in the Delta, loss of revenue from support industries for agriculture, etc.; Mr. Snow said it does not go to detailed third party impacts, only general analysis. He said once they devise a strategy that is approved, that level of analysis will be evaluated in Phase III.

Vice Chair Mello asked if its appropriate to raise concerns and submit comments now, or wait till Phase III; Mr. Snow said comment early and comment often.

Commissioner McGowan asked if the comments at the public hearings will be formally responded to in the Final EIR; Mr. Snow said there will be a formal public hearing. Commissioner McGowan asked if there is a role for local government and what it is, particularly in regard to conversion of agricultural lands. He said the local governments have traditionally held authority over land use issues. Mr. Snow said CALFED is not asserting any authority over land use issues, however, CALFED is trying to recover endangered species and to do that there need to be bold decisions made to take advantage of opportunities that will result in recovery of endangered species. Commissioner McGowan asked if there might be a role for the Delta Protection Commission because there is an evolving program of habitat restoration in the Delta and he assumes that must be deemed grossly inadequate; Mr. Snow said there is movement in place, however, there is increasing pressure associated with several new additional listing of endangered fish. Commissioner McGowan said there is a problem if the farmers in the Delta become endangered; Mr. Snow said CALFED is trying to work with the reclamation districts to identify restoration sites. He said there have been discussions about a possible role for the Delta Protection Commission.

Commissioner Nottoli asked that the socio-economic impact analysis go beyond the immediate Delta and address the loss of property taxes and loss of sales taxes and what those losses would mean to the affected local governments, especially the Counties; Mr. Snow responded that CALFED is researching the federal payment of fees in lieu of property taxes, and suggested that conservation easements are preferred over public agency acquisition. He said the program has to evolve to be implemented only where it has to be and when it has to be implemented, and to be implemented in a way that minimizes impacts to the local community, with easements rather than full acquisition.

Mr. Snow noted that the implementation would take place over 30 years they are working on developing five year blocks of the program. He suggested that the Commission might be helpful in assembling those blocks of activities.

Chairman McCarty asked how to integrate all the programs that are going on in the Delta areas to ensure that the cumulative impact of all habitat programs not put agriculture out of business in the region; Mr. Snow said all the programs should work together and CALFED is proposing to do a Delta HCP to ensure that the programs do work together.

Vice Chair Mello noted on-going programs are currently being implemented without the level of public review afforded by CALFED and suggested a "cease fire" until the CALFED program is approved and implemented; Mr. Snow said there is the chance that CALFED will not go forward, so CALFED cannot stand in the way of the ongoing programs.

Commissioner Salmon asked the definition of surface storage; Mr. Snow said that would be an additional reservoir to provide new water. He said they are looking at off-stream storage, not on-stream storage. He said the Auburn Dam was slated to be a flood control facility which does not provide the type of water storage needed for the program. Commissioner Salmon asked if the program is based on acquisition of new water; Mr. Snow said one question is how much are people willing to pay into the CALFED program if they don't get any new water. He said there needs to be an investment into the existing system to make sure the existing water exports continue, and he said there is additional investment needed to add new storage. He noted there are parties involved that want no new storage.

Commissioner Harris asked if the Glenn-Colusa Canal is included in facilities associated with the Sykes project; Mr. Snow said no, the Tehama-Colusa Canal would be used with the Sykes project and there is a possibility of extending the Tehama-Colusa Canal.

Vice Chair Mello asked if comments at the CALFED public hearings will be incorporated into the program during the public hearing process later; Mr. Snow said the changes will come at the end of the public hearing process.

Commissioner Curry said recreational boating is a seven million dollar industry in California and asked how CALFED is addressing recreational boating in the Delta; Mr. Snow said CALFED has identified boating as both an impact and as an opportunity. He said where habitat areas are enhanced, there are those interested in implementing speed zones. He said there will need to be places for boater access which will avoid levee impacts. Commissioner Curry asked if MBTE has been addressed in the program; Mr. Snow said there has been no discussion of MBTE by CALFED.

Commissioner McGowan thanked Mr. Snow for the briefings that CALFED staff has presented to the citizens of Yolo County.

Robert Clark, Manager of the North Delta Water Agency, asked if the ERPP covers the mitigation for the storage and conveyance projects, or will there be additional mitigation required; Mr. Snow said the ERPP is a basic framework for environmental enhancement and there will be an HCP which will address mitigation. Mr. Clark asked if the total amount of land dedicated for environmental projects will exceed that outlined in the ERPP; Mr. Snow said no, however, the 30 year program may change based on adaptive management. Mr. Clark asked if the isolated facility is built will more agricultural land be converted; Mr. Snow said there will be more agricultural land impacted due to the construction of the facility, but not for restoration.

Clifford W. Koster, said he is an exporter, and lauded the CALFED effort. He said he heard that there is no mandated land retirement program in the Delta, it will be based on willing sellers and willing buyers. As an exporter, he is glad that there is a comprehensive statewide plan to address these issues. He said he had been at a California Farm Bureau briefing recently and appreciated people of different positions meeting around the table to address issues. He said the program will be expensive, but the State has been remiss in meeting the environmental needs of the State. He said its critical to protect water exports to farmers south of the Delta. He said that when the Commission was created, the San Joaquin Farm Bureau set up an oversight committee and he said he believes the Commission is doing a good job. He said he understands the Commission wants a time extension and could help oversee the CALFED program. He wished the Commission luck.

Jerry Robinson, asked why a drain for the Central Valley is not being evaluated as part of the CALFED program since that drainage is a big problem for South Delta water quality; Mr. Snow said CALFED is evaluating strategies to reduce salt and selenium in the system, but a drain is not included in the program.

Mike Wakeman of Congressman Pombo's office, asked since 800,000 ac ft of new water would result from the new storage and 800,000 ac ft of existing water was directed to the environment under CVPIA, the State will be no better off than before. He said the process is being sold as a solution to water problems in the State, but he believes the process does not address the State's water problems; Mr. Snow agreed that the program will not resolve all the water problems for the State, it is rather a program to address problems in the Bay and Delta. He said that doubling new water storage does not double yield because you are dependent upon the water sources to fill those new water storage facilities.

Vice Chair Mello asked if the yield from the new storage would average 800,000 ac ft per year; Mr. Snow said critical year yield would be 800,000 ac ft and long term average yield would be 1 to 1.5 maf.

Commissioner Potter noted that Alex Hildebrand is proposing an alternative which will be evaluated by a subgroup of the Ops Group to see if there are additional actions that can be taken to improve South Delta Water Quality. South Delta has legitimate concerns about drainage, even though that was not part of CALFED's original program.

Commissioner Yates suggested that the Ops Group discussion be coordinated with the San Joaquin Valley drainage program.

Chairman McCarty thanked Mr. Snow and CALFED staff for making the presentation. He said Mr. Snow had done an excellent job with the program and addressing the issues raised. He encouraged the Commissioners and the public to attend the public hearings.

Mr. Snow introduced the staff at the meeting including Rob Cooke, Levees Program; Mark Callan, Modeling and Storage and Conveyance Evaluation; and Terry Mills, ERPP.

**10. Status of Legislation to Extend the Sunset Date of the Commission and Amend the Text of the Delta Protection Act of 1992.**

Chairman McCarty said at the January meeting the Commission voted to request a ten year extension of the sunset date. A Subcommittee meeting was held in February to discuss possible text changes to the Delta Protection Act. At the Subcommittee meeting various ideas were discussed, but generally the group believed the current legislation text is adequate, and no substantive changes need to be made. The recommendation of the Subcommittee is now before the full Commission for discussion.

Ms Aramburu added that Commissioners had received a copy of the current amendment language and a paragraph that Senator Johnston has drafted to open the door for discussions about the Commission being a part of implementation of the CALFED program. She noted that the goal would be to work with the existing land uses, and to have the Commission serve as an entity that would work with the local governments and landowners to help implement the program rather than having a new agency implement the program in the Delta. She noted that the language has been amended into an old bill, SB 1075, and it is now before the Assembly.

Vice Chair Mello asked about the idea of allowing the County Supervisors to appoint a representative; Ms Aramburu said it was discussed but there was no unanimous position.

Chairman McCarty noted that the terms of all the reclamation district representatives will expire at one time; perhaps those terms should be staggered. He said no one is opposed to term limits on the Commission, however, the time extensions were not anticipated and he suggested the expiration be staggered to avoid continuity problems.

Commissioner Cabaldon said he would like the Commission to further define its long term role. He said the Act outlines tasks which have already been completed. He sees no new significant work in the statute or the proposed amendments. He noted the land use responsibilities have already been implemented. He said that local government representatives' lack of consistent attendance may be due to "mission drift" and not being clear about what the Commission's role is. He suggested the Commission could play a significant role in CALFED, but that role should be articulated clearly in the statute. He said Solano County's frustration points to the need to define the Commission's future role. He added that the membership of the Commission should be revisited--should cities continue on the Commission? He agreed that many members are not participating as regularly as they could, but part of that is that the Commission should determine the interests and concerns of the member agencies/districts. Commissioner Cabaldon said the Commission should ensure it is meeting its responsibilities to its stakeholders.

Chairman McCarty accepted the comments, but expressed concern due to the time line of the pending legislation. He said the Commission must act today, or the Commission will sunset. In that case the Commission would have to be resurrected which would be a much more difficult task. He noted that the Commission has had a glimpse into the possibilities of roles the Commission could play in CALFED, but it is premature to refine and define a role due to CALFED's time line. He suggested seeking an extension of the Commission first, then negotiate with CALFED to develop a role for the Commission to protect and enhance agriculture, recreation and wildlife habitat; tasks which address land use issues in the Delta.



Commissioner Cabaldon countered that the bill does not need to be heard in the Appropriations Committee until August, and there is time to discuss these ideas further. He said he is in support of a time extension, but ten years implies that the Commission has thought through its long term role. He said if the role is not defined, a shorter time extension would be appropriate.

Chairman McCarty said the August Appropriations review means no Legislature approval until October and said the CALFED process is proceeding quickly. He suggested the Commission seek the continuation first, and seek a refined role later.

Vice Chair Mello said the Commission should have the ability to sunset itself. He said if CALFED goes away, the Commission could also decide to sunset. He noted there are a lot of other environmental restoration projects going on in the Delta which will affect land uses, and he suggested the Commission seek to participate in any environmental habitat restoration programs, not just CALFED. He said if the Legislature does not allow the Commission to participate in the CALFED process, he agrees that the Commission should sunset.

Commissioner Harris agreed that at the last meeting the Commission decided to seek a ten year extension, but evaluate the Commission's role and need to continue every two years.

Commissioner Thomson said the Solano County Board of Supervisors' discussion centered on the ten year time extension, but the issue of the Commission's role was also raised. He said the cut back in meetings from every month to every other month might indicate that there are not pressing issues before the Commission. He said many times small Commissions, like the Delta Protection Commission, make major decisions that affect local governments and wreak havoc in those communities. He said these temporary commissions should not take on a life of their own and start dictating local land use issues, thus superseding the County's own land use decisions. He asked why a ten year extension was selected?

Vice Chair Mello said the ten year term came from the North Delta Water Agency. He said he personally opposed the original legislation and would not support a time extension without a role or mission. In the meantime, CALFED is upon the Delta, and the North Delta Water Agency supports the Commission helping protect the Delta in the CALFED process. He said he supports sunset of the Commission if there is no role, and he supports an internal review every two years to evaluate the Commission's role and mission.

Commissioner Thomson said the Board of Supervisors would be more supportive of the time extension of the Commission if there is review of the Commission's role every two years. He said there are public funds being expended which could be redirected if the Commission is no longer needed.

Vice Chair Mello said he believes the evaluation of the Commission should be by the Commission itself, not in the Legislature. It would give the Commission validity in negotiations with CALFED if there is a ten year window for the Commission, rather than needing to seek reauthorization every two years or so.

Commissioner Potter noted that there will continue to be a need to have an entity to serve in the appellate function outlined in the Act. If the Commission is to change its role, or sunset, there would need to be an appellate body designated. In addition, he was in a Legislative Committee where Senator Johnston discussed the Delta Protection Commission with Lester Snow. He said if there is a future role for the Commission there may be a conflict because he sits on the CALFED Policy Board.

Commissioner Broddrick said the Commission went through a long process to develop policies which became the basis for the Commission's authority base, but he said the Commission should not get away from the forum being available to consolidate and discuss the balance between the values the Commission has established. Each Commissioner has his/her own opinion which can be discussed in this forum, and the Commission can represent the charter of the Commission by having debated at the meetings and developing a compromise or a position or value statement to legislators, to CALFED, or to the agencies on the Commission. We have the ability to come together to help establish ownership of solutions for the areas affected. This cannot be established or mandated by legislation, but that is the power of this Commission.

Chairman McCarty agreed; the Commission is a very unique group due to the representation which has dealt with some very thorny issues and has developed some good solutions to those issues. He said the Commission has been able to be effective quietly. He would hate to lose that.

Commissioner Potter said the original comment was that the Commission has no charge; the Commission was charged with developing a land use plan; that Plan has been developed and adopted which leaves the appellate role. He agrees that the Commission needs a new role, or to go away.

Chairman McCarty said the Act also outlines responsibilities regarding levees and developing long term funding for levee maintenance, there is a section about conservation easements to provide for habitat, and to coordinate those activities. He said those are the same activities being addressed by CALFED.

Commissioner McGowan said theoretically he agrees with Commissioner Thomson's concerns about the possible conflicts between a regional agency and a County; fortunately it has worked out well to date. He said he is concerned about the Delta Protection Commission overriding the local governments' land use authority. He noted the uniqueness of the Commission in that the Commission is clear and focused on the protection of the Delta. The Delta Protection Commission is the only group which is concerned about the Delta as a whole. He said when there are important decisions, the Commissioners do engage. He said he supports the continuation of the Commission; whether it be ten years or another time period, he said the Commission should attempt to define the Commission's role with CALFED. If the Commission is involved with the habitat enhancement component of CALFED, the Commission will have a dynamic, clear role. If not, the Commissioners could move on to other tasks.

Commissioner Potter said if the Commission wants to clarify its role in the legislation, now is the time.

Vice Chair Mello said the Commission needs to mesh its three issue areas--agriculture, recreation and wildlife habitat. He said there has got to be a better way to implement the regional goals and programs, and the Delta Protection Commission could do a better job.

Chairman McCarty summarized that there is no consensus of policy language to add to the proposed amendments to the Act. Ms Aramburu asked if there would be interest in setting a Subcommittee meeting, or setting a special meeting of the full Commission?

Commissioner Yates suggested a smaller group discuss this issue. He said if there is a need to redefine the role of the Commission, land use should and will continue to be the key issue before the Commission. He said there are many programs that will affect land use in the Delta and those actions need to be looked at. He said the Commission's charge is to protect all three existing land uses. He suggested a small group could convey that to Senator Johnston.

Commissioner Potter asked if the Commission had a standing Committee on the Future of the Commission; Chairman McCarty said no.

Commissioner Potter made a motion that the Chairman communicate to Senator Johnston the support of the continuation of the Commission for some extended period of time, that the Commission review its role every two years, and that the Chairman work with Senator Johnston and CALFED staff to define a role for the Commission, and that role be expressly defined in the legislation. He said there is not a need to have a Committee.

Commissioner Yates asked to amend the motion to broaden the Commission's role beyond CALFED, and address other State and federal programs that could and will affect land uses in the Delta; he included all habitat programs, or programs that retire agriculture.,

Commissioner Potter suggested that the Chairman work out those details with Senator Johnston.

Commissioner Yates seconded Commissioner Potter's motion.

Vice Chair Mello asked if the two year review would be by the Commission; Commissioner Potter said yes.

Commissioner Brean asked if there should be language in the Act to change the nature of the annual report to become a biennial review of the Commission's role and value when the annual report is submitted to the Governor and the Legislature.

Chairman McCarty asked if the proposed amendment language includes the internal two year review; Ms Aramburu said there is no such language in the Act, nor proposed as an amendment to the Act.

Commissioner Potter said the Act could be amended to require a biennial report to the Governor and Legislature which includes the evaluation of the Commission.

Commissioner Cabaldon asked that in negotiations with Senator Johnston, the Chairman should differentiate between the objectives of the Commission and what the actual tasks are. An advisory role is very different than a land use appeal body. He said the Commission could be more of an advocacy group, but that would be different than the current tasks and role. He suggested seeking clarity in discussions with Senator Johnston.

The motion was approved by a voice vote; Commissioner Broddrick abstained.

11. Consideration of Waiver Recognizing Attorney General Representation of Both the Delta Protection Commission and CALFED.

Dan Siegel said the rules of professional ethics which apply to attorneys state that where there is an actual or potential conflict of interest in the representation of one or more clients, the representation cannot continue unless the attorney, or law office, obtains an informed, written consent to continue representation of both clients. He noted that the Attorney General's (AG) Office represents several State agencies as well as CALFED. He said the AG's office has identified a possible conflict between its representation of the Commission and the representation of CALFED. The most likely areas where a conflict might arise are the Commission's concerns over the CALFED long range plan, and possibly over CALFED's Category III allocation of funds to various projects. To avoid any appearance of impropriety, the AG's office is requesting of both CALFED and the Delta Protection Commission a written waiver of any potential conflict of interest. CALFED has given written consent. He noted that Chairman McCarty preferred to agendize the matter before the full Commission.

Commissioner McGowan moved the action; Commissioner Nottoli seconded the motion.

Commissioner Potter stated he was opposed to the action. He said he is not convinced the AG has the right to represent CALFED; he was not satisfied that CALFED has "status" such that the AG can represent them. He is aware that the AG provides legal advice and counsel to CALFED, but if pressed, he thinks the AG would end up representing the Delta Protection Commission, not CALFED. He said the Commission could be giving up something they do not need to give up in signing the waiver. He said if the AG researched the issue further, and then returned to the Commission, he might be persuaded that he is wrong. But he believes the AG is charged with representing the Delta Protection Commission, and is not charged with representing CALFED.

Chairman McCarty said this was discussed in a meeting with Mr. Siegel and Rick Frank, and he recalled them saying if there is a conflict, both agencies would be referred to outside counsel.

Mr. Siegel said there was a similar possible conflict identified between State Lands Commission and CALFED, and State Lands agreed to sign a waiver. He said he is not sure how the AG's office will respond if there is no written waiver from the Delta Protection Commission.

Commissioner Potter said the AG's office may not actually represent CALFED, and that the AG's office has a responsibility to represent the Delta Protection Commission.

Mr. Siegel said the AG's office does represent CALFED.

Commissioner Potter asked how the AG represents an entity that does not exist; he said there is only a framework agreement signed by State and federal agencies.

Mr. Siegel said the AG's office represented CALFED in two bid process hearings before the Department of General Services two months ago.

Commissioner Yates said he would have to ask the Department of Food and Agriculture's attorney's advice about the waiver. He said the primary responsibility of the AG's office is to State agencies.

Commissioner Cabaldon asked if this matter could be deferred to the next meeting since there is no pending conflict, and there won't be until the Commission reviews the CALFED environmental document at the next meeting. He noted the authority of CALFED is derivative from the State and federal agencies, and said waivers might be more appropriate between the Delta Protection Commission and the other agencies on the Commission that are represented by the AG's office. He said if there is a potential for conflict it is between the Delta Protection Commission and the other State agencies, as much or more than a possible conflict between the Delta Protection Commission and CALFED. He counseled against a hasty decision.

Chairman McCarty suggested deferring action on the agenda item; Commissioner McGowan withdrew his motion.

Mr. Siegel asked for clarification of issues.

Commissioner McGowan commented the AG has not asked for a waiver regarding potential conflicts between other State agencies and the Delta Protection Commission; Mr. Siegel said potential conflicts lurk under almost every situation they are involved in because there are dozens of State agencies with differing points of view. He said when the AG's office staff saw that the Delta Protection Commission had specific concerns about CALFED, a red flag was raised.

Commissioner McGowan noted that the Delta Protection Commission was first in time as a client for the AG's office. He said whatever legal relationship the AG has had with Delta Protection Commission and the other State agencies continues unchanged; it is CALFED that is new.

Mr. Siegel said CALFED may be newer, but the AG is very enmeshed in representation of CALFED.

Commissioner McGowan said it's as simple as having two clients; should both clients be dropped to avoid a conflict? He said there is a valuable relationship between the AG and the Delta Protection Commission and he said it may not be up to the AG to decide to drop existing clients. He said the Delta Protection Commission would like to keep the AG as its attorney.

Chairman McCarty asked the AG to clarify if CALFED is a legal entity entitled to representation by the AG.

Commissioner Harris asked if CALFED is a legal entity and how CALFED is funded; Commissioner Potter said the Department of Water Resources and the Bureau of Reclamation have been funding the CALFED program, and recently funds were designated in the federal budget. He said there is just a piece of paper which says the signing parties will try to work out the issues; none of the signatories gave up any of their individual authorities.

Commissioner Potter asked if the AG was designated to represent the Delta Protection Commission when the agency was formed; if yes, then that directive should be carried forward. He said the relationship with CALFED is not directed; it is voluntary.

Commissioner Curry said he attended a briefing by the Water Education Foundation and Lester Snow said a new entity may have to be created to implement the CALFED program. He asked if that is what Commissioner Potter was referring to.

Chairman McCarty said the Delta Protection Commission exists with conflicts between member agencies, and everybody just agrees to continue. Then CALFED comes along, a new entity without any real legal standing; there is no real authority, just an agreement among the various agencies. He asked why that potential conflict can't be treated like all the other potential conflicts. He asked if there was a compelling reason for the AG to seek the waiver.

Mr. Siegel described being asked by staff for advice on language for legislation to give the Commission more influence over CALFED.

Chairman McCarty said there is a priority of clients, and asked the AG to honor that priority.

Mr. Siegel said the AG's office may need to withdraw as counsel.

Commissioner McGowan said the AG created the conflict, if there is one, when the AG took on a new client--CALFED. He said the AG's office has an ethical responsibility to continue to represent the Delta Protection Commission as an existing client. He then asked what the alternatives are for the Commission; would the AG hire another lawyer?

Mr. Siegel said the Commission could hire another lawyer.

Commissioner McGowan said that whatever funding mechanism is used to fund the AG's services to the Delta Protection Commission should be available to the Delta Protection Commission to hire another lawyer. He said the Delta Protection Commission is entitled to independent counsel and if the AG is not going to provide counsel, the AG should supply the Commission with independent counsel. Commissioner McGowan said the issue was raised by the AG asking for the waiver; if there had been no request for a waiver, the relationship would have continued unchanged.

Commissioner Nottoli said it's important to resolve because the Commission needs to be able to seek advice, and get needed information in confidence and comfort, for example seeking help with language for legislation. He said the AG should be able to advise its client without worrying that there may be some conflict, and without being confined. He said as the Delta Protection Commission's attorney the AG must be unconfined, and the Delta Protection Commission needs to be sure that the advice of counsel is not constrained.

Mr. Siegel agreed that is what the AG wants--to freely give unrestrained and forceful representation. With the waiver, that representation can be provided. The State AG likes to be very clean; he said he is not sure there is a conflict, but they want to make sure there is no appearance of impropriety.

Chairman McCarty said that this item will be deferred to the next meeting. At that time the Commission would like to know if the AG is going to insist upon the waiver; how the AG will respond to the Commission's need for adequate and forthright legal counsel; and if a waiver is required, the Commission will decide at that time whether they will grant the waiver.

Commissioner Yates asked the difference between the Delta Protection Commission-CALFED conflict and potential conflicts between other state agencies and CALFED; Mr. Siegel said there is a need to discuss that issue within the AG's office.

Commissioner McGowan asked for information about the Commission's alternatives for legal counsel.

Commissioner Cabaldon asked for analysis of CALFED legal standing, and if they are the appropriate agency to sign a waiver with, or if it should be with the individual signatory agencies. He said CALFED is a process, not an entity. If it is an agency, then maybe it should have a seat on the Delta Protection Commission.

Commissioner Brean asked if the person who signed the waiver on behalf of CALFED has the authority to sign a waiver.

12. Commissioner Comments/Announcements.

Commissioner Curry said he wanted to make clear that regarding Commissioner attendance he was referring to a specific Commissioner who is no longer on the Commission. He said he did not intend to comment on the attendance of any of the current Commissioners.

13. Adjournment.

The meeting was adjourned at 9:30 p.m.